



Federal Communications Commission

Washington, D.C. 20554

February 19, 2008

DA 08-409

In Reply Refer To:

1800B3-MJW

Released: February 19, 2008

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Re: KFCD(AM) Farmersville, TX
Facility ID No. 43757
File No. BAL-20060117ACU

KHSE(AM), Wylie, TX
Facility ID No. 133464
File No. BAP-20060117ACV

Applications for Assignment of License

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (“Petition”)¹ filed by David A. Schum *et al.* (“Petitioners”)² seeking reconsideration of the Audio Division’s letter decision³ of December 28, 2006, which denied Petitioners’ Petition to Deny the captioned assignment applications. We also have before us an Opposition to Petition for Reconsideration (“Opposition”)⁴ filed by Bernard Dallas, LLC (“Bernard”) and a Reply to Opposition to Petition for Reconsideration (“Reply”)⁵ filed by Petitioners. For the reasons stated below, we deny the Petition.

Background. The *Decision, inter alia*: (1) rejected Petitioners’ unsupported claim that Bernard failed to disclose foreign ownership interests in its principal equity owner, D. B. Zwirn Special Opportunities Fund, L.P. (“DBZ”), thereby violating Section 310 of the Communications Act of 1934, as

¹ The Petition was filed on January 27, 2007.

² In addition to Mr. Schum, Petitioners include J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel. The Petition was filed Jan. 29, 2007. Petitioners are equity owners of The Watch, the parent company of DFW Radio, a former licensee of KFCD(AM) and former permittee of KHSE(AM). See *DFW Radio Licensee, LLC and Bernard Dallas LLC*, Letter, 21 FCC Rcd 14996 (MB 2006) (“*Decision*”).

³ *Id.*

⁴ The Opposition was filed on February 12, 2007.

⁵ The Reply was filed on February 23, 2007.

amended;⁶ (2) found that Petitioners had not established a *prima facie* case that DBZ engaged in an unauthorized transfer of control of KHSE(AM); and (3) granted the applications to assign the license of Station KFCD(AM), Farmersville, TX, and the construction permit of Station KHSE(AM), Wylie, TX, from DFW Radio License, LLC to Bernard.⁷

On reconsideration, Petitioners allege that there is new evidence of Bernard's non-compliance with Section 310, *i.e.*, a Bloomberg.com article stating: (1) that a DBZ-associated hedge fund had withdrawn its registration with the Securities and Exchange Commission ("SEC"),⁸ (2) that a "key employee in the Zwirn organization plead (sic) guilty to federal criminal charges . . . during a prior employment at Citigroup;"⁹ and (3) that Connecticut's Attorney General told a reporter that hedge funds should be subjected to greater scrutiny because of their "aura of secrecy."¹⁰

Discussion. Under Section 1.106(c) of the Commission's rules (the "Rules"),¹¹ reconsideration is warranted only if a petitioner presents relevant facts that could not, with diligence, have been presented to the Commission in earlier filings. Petitioners submit that the Bloomberg.com article satisfies the Section 1.106 timeliness requirement because the information in the article was not available during the pleading cycle associated with their Petition to Deny,¹² and because the article contains information relevant to the alleged Section 310 violation.

We need not decide whether the Petition is timely because we find the information therein irrelevant¹³ to DBZ's compliance with the provisions of Section 310. Petitioners imply that D.B. Zwirn and Co. withdrew its SEC registration because it was concerned that the registration would disclose foreign ownership interests in DBZ. We cannot draw such a speculative inference, especially in view of the statement in the Bloomberg.com article that over one-hundred other companies also withdrew their registrations when a court invalidated an SEC regulation that had previously required these companies to register. The Connecticut Attorney General's views about disclosures by hedge funds are unconnected to Commission intent in identifying foreign ownership interests in those funds. Petitioners have not established that D.B. Zwirn's former employee's criminal conviction is relevant to a Section 310 violation. As in the *Decision*, we find nothing here that refutes the sworn statement by a DBZ executive that "[t]here is no direct or indirect foreign equity ownership in Bernard Dallas LLC."¹⁴

Petitioners also seek to "incorporate by reference their factual showing and legal arguments made in their Petition to Deny,"¹⁵ concerning alleged unauthorized transfer of control, alleged abuse of process

⁶ 47 U.S.C. § 310 ("Section 310").

⁷ The *Decision* established that Bernard's payment of KHSE construction costs did not make out a *prima facie* case that an unauthorized transfer of control had occurred. *Id.* at 15001-15002.

⁸ See Petition at 3 and Appendix A. Although Petitioners discuss only the Bloomberg.com article, Appendix A also contains a similar article from the New York Post.

⁹ The articles, *supra* n.8, also report that D.B. Zwirn & Co. discharged the employee in 2004 after learning of his plea to the criminal charges.

¹⁰ See Petition at 3.

¹¹ 47 C.F.R. § 1.106(c).

¹² See Petition at 3.

¹³ *Cf. Letter to Joseph Isabel*, 22 FCC Rcd. 18630, 18361 (MB 2007) ("The Commission has consistently held that newspaper articles are the equivalent of hearsay . . ."), *citing Heidi Damsky*, Memorandum Opinion and Order, 13 FCC Rcd. 16352 (1998) and *Pikes Peak Broadcasting Co.*, Memorandum Opinion and Order, 12 FCC Rcd 4626 (1997).

¹⁴ See *Decision*, 21 FCC Rcd at 15003.

¹⁵ Petition at 8.

when Bernard's Texas counsel threatened to take legal action against Mr. Schum,¹⁶ and Bernard's alleged retention of a prohibited reversionary interest.¹⁷ We agree with Bernard¹⁸ that using incorporation by reference to reprise arguments already made and rejected is improper.¹⁹ The Commission will not grant reconsideration "merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken."²⁰ We therefore decline to reconsider Petitioners' repetitive arguments and their request for an evidentiary hearing.²¹

Decision. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed January 29, 2007 by David A. Schum, J. Michael Lloyd, Frank D. Timmons, Carol D. Kratville, Brian M. Brown, Robert E. Howard, Edwin E. Wodka, John W. Saunders and Richard J. Drendel IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ See *id.* at 12.

¹⁷ *Id.*

¹⁸ See Opposition at 2-3, citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Company v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967, *rehearing denied*, 384 U.S. 947, *petition to reopen denied*, 4 FCC 2d 608 (1966) ("WWIZ"); *WAIT Radio*, 46 RR 2d 1556 (1980).

¹⁹ In analogous circumstances, the Commission stated: "Such incorporation by reference is not allowed under our rules. Our rules do not allow for a 'kitchen sink' approach to an application for review, rather the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review." *Red Hot Radio*, Memorandum Opinion and Order, 9 FCC Rcd 6737, 6745 n.63 (2004).

²⁰ *WWIZ, Inc.*, 37 FCC at 686.

²¹ See Petition at 12-13. See also, *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985). (A hearing is required only if "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.")